

an applicant's or licensee's character. See Policy Regarding Character Qualifications in Broadcast Licensing, 5 FCC Rcd 3252 (1990) ("1990 Character Policy Statement").

2. Here, it is undisputed that Rice has been convicted of sexually abusing six juveniles over a five year period of time. As the Commission stated in its Order to Show Cause (at n. 9) in this case, "[w]hile the pattern of child abuse and assault for which Rice was convicted may well be behavior which so shocks the conscience as to have been within the purview of the more lenient 1986 Character Policy Statement, it is most certainly within the 'any felony' misconduct that is within the purview of the 1990 Character Policy Statement."

3. Moreover, the record here is devoid of probative evidence sufficient to mitigate the serious multiple felonies for which Rice has been convicted. In determining the relevancy of a conviction on a licensee's character, the 1986 Policy Statement said the Commission would consider the following factors: (1) the nature and seriousness of the crime; (2) nearness or remoteness in time; (3) rehabilitation of the offender; (4) willfulness of the misconduct; (5) frequency of the misconduct; (6) nature of the participation, if any, of the manager or owners; (7) any remedial action taken by the licensee to curb the conduct and or dismiss the perpetrator; and (8) the licensee's past record of complying with the Commission's Rules. 102 FCC 2d 1197 n. 42, 1227-8. See also, 1990 Character Policy Statement, 5 FCC Rcd at 3252.

4. Under each of the above-enumerated factors the Licensees either have presented no evidence or evidence which is so trivial as to be of no consequence when compared to the magnitude of the crimes for which Rice was convicted. Rice's multiple felony convictions involving the sexual abuse of children, over a five year period of time, are extremely serious crimes that shock the conscience. Rice's crimes are not remote in time as evidenced by the fact that he is currently in prison. No significant evidence of rehabilitation has been presented.<sup>5</sup> And, while the Licensees may argue that Rice has been "insulated" from station affairs, the fact is that Rice is the 100% owner of two of the licensee corporations and majority owner of the third (LBI). Consequently, his ability to control the corporations remains undiminished.<sup>6</sup> (As noted at paragraph 13 of the Order to Show Cause, "Rice's alleged exclusion from control of the stations will extend apparently, only for as long as Rice desires it to continue."). The sexual abuse of children by Rice was willful and there has been no showing by the Licensees that Rice lacked criminal intent. Rice's criminal activity was frequent, involving the sexual abuse of six different boys over a five year period of time. The perpetrator here cannot be dismissed from his position at the stations-- he owns the Licensees. Finally, the fact that the Licensees' stations have operated generally in conformity with the Commission's Rules cannot outweigh the magnitude and egregious

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<sup>5</sup> Factors relevant to an applicant's rehabilitation include the applicant's reputation for good character in the community. The licensees have presented four statements directed to Rice's character.

<sup>6</sup> Even complete stock divestiture in conjunction with exclusion from day-to-day operational control of the licensee is not sufficient grounds to preclude revocation for felonious non-FCC conduct of a key principal where the specter of that principal's influence remains. Petroleum v. Nasby Corp., FCC 96-103, released March 20, 1996.

nature of the wrongdoing for which Rice has been convicted.

5. Commission precedent supports revocation when a licensee, such as Rice, is convicted of a heinous felony. In South Carolina Radio Fellowship, 6 FCC Rcd 4823 (1991), the Commission revoked the license of a convicted drug trafficker. In doing so the Commission held that "in light of [the licensee's] criminal activities it would disserve the public interest to permit him to keep his license." In the South Carolina Radio Fellowship case, the Commission found that the wrongdoing was recent and that, like the instant case, the licensee had "made no significant showing of mitigating circumstances or rehabilitation despite the opportunity to do so." 6 FCC Rcd at 4824. On these facts, the Commission concluded that "the [licensee's] drug conviction is itself sufficient basis for revocation . . . ." Id. Thus, as the Review Board has noted, "where the conduct is egregious, the Commission may find a lack of character without specifically finding a nexus between the felony conviction and the applicant's truthfulness and reliability." Richard Richards, 10 FCC Rcd 3950, 3955 (1995).<sup>7</sup> Moreover, the Order to Show Cause in this case, at paragraph 10, makes clear that the Commission does not consider drug trafficking any "more serious or heinous than other felonies in general or than child sexual abuse in particular." Given the

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<sup>7</sup> In the Richard Richards case, the Review Board reversed the ALJ and found Richards qualified to be a Commission licensee despite a felony drug conviction for possessing marijuana with the intent to distribute. In the Richards case, however, the Board found mitigating evidence, including the fact that Richards was rehabilitated and that his wrongdoing did not include preying on others. 10 FCC Rcd at 3958-59. Even so, the Board found the question of whether Richards had the requisite qualifications to remain a licensee to be "a close one." 10 FCC Rcd at 3959. Here, where there is no evidence of rehabilitation and the wrongdoing involved preying on juveniles, the result clearly must be different.

seriousness of the crimes for which Rice has been convicted and his relationship to the corporations whose licenses have been designated for hearing, case precedent requires revocation of each of the licenses at issue in this proceeding.

## **Issue Two**

6. This issue was specified to determine whether the licensees misrepresented to the Commission that Michael Rice had been excluded from the management and operation of the licensees' stations following his hospitalization in April 1991. It is well established that the Commission will not tolerate misrepresentations by its licensees. In its Policy Statement on Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1210 (1986), recon. denied, 1 Rcd 421 (1986), the Commission stated:

"the trait of 'truthfulness' is one of the two key elements of character necessary to operate a broadcast station in the public interest. The Commission is authorized to treat even the most insignificant misrepresentation as disqualifying." [Footnote omitted].

The Commission's concern with the honesty of its licensees stems from the fact that its scheme of regulation "rests on the assumption that applicants will supply [it] with accurate information." Thus, "[d]ishonest practices threaten the integrity of the licensing process." Id. This policy is reflected in Section 1.17 of the Commission's Rules which specifies that no licensee shall in any "written report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission." In the past, lack of truthfulness in

communications to the Commission have resulted in either non-renewal or revocation of license. See, FCC v. WOKO, Inc., 329 U.S. 223 (1946); RKO General v. FCC, 670 F2d 215 (DC Cir 1981), cert denied 456 U.S. 927 (1982); KQED, Inc., 3 FCC Rcd 2821 (1988);<sup>8</sup> Tri-State Broadcasting Co. Inc., 5 FCC Rcd 1156 (Rev. Bd. 1990).

7. Here, the claim that Rice had been insulated from the Licensees' activities was reported in a number of letters sent to the Commission. On June 14, 1991, LBI sent a letter to the Commission in which it claimed that, since his hospitalization on April 3, 1991, Rice "has had absolutely no managerial, policy, or consultative role" in its stations. Similarly, in a letter to the Commission dated December 3, 1991, CBI reported that Rice "continues to have no managerial, policy or consultative role in the affairs of KTDI(FM)...." By letter dated February 26, 1992, CMI informed the Commission that there had been no change in Rice's status. And by letter dated May 14, 1992, CBI informed the Commission that although Rice was no longer hospitalized, "he continues to have no managerial or policy role in the affairs" of its three stations. Finally, in a letter dated September 30, 1994, CMI, CBI and LBI, in addition to reporting Rice's conviction and incarceration, reaffirm that Rice "has been excluded from involvement in the customary managerial, policy, and day-to-day decisions and operations of [the] licensed stations and construction permits." It is these categorical statements of Rice's exclusion from stations affairs that form the basis of the

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<sup>8</sup> In KQED, the Commission noted that misrepresentation and lack of candor issues both include the common element of deceptive intent and rejected an ALJ's conclusion that he could not disqualify a licensee because the words "lack of candor" were not expressly incorporated into the issues designated for hearing.

misrepresentation issue.

8. The record here establishes that, contrary to the representations of the licensees, from the time Rice left the psychiatric hospital until the time of his incarceration, he was involved in the stations' managerial, policy and day-to-day decision making. This involvement began a few weeks after he left the hospital when he went to the Licensees' chief executive officer, Cox, and told her he wanted to be involved in the engineering aspects of the stations' operations. Of course Cox acquiesced in his request. The stations after all belonged to Rice. Cox was aware, however, that the Commission had been told that Rice was to have no consultative or other role in the affairs of the stations. Rather than inform the Commission of Rice's involvement in engineering, she decided to exclude the word consultative from future reports to the Commission. By this means she hid the change in Rice's role while keeping the literal wording of the reports truthful. Thus, the Commission did not learn of Rice's role in this aspect of the stations' activities following his release from the hospital. This deceit reflects adversely on the licensees' willingness to be truthful and candid in its dealings with the Commission.

9. Moreover, the record here shows that Rice's involvement in the affairs of the stations following his release from the hospital went much further. In addition to engineering, Rice was involved in the hiring and firing of station employees, in the programming of the stations and in the stations' finances. This occurred at least in part because, although Cox visited each of the stations and informed the employees of Rice's

hospitalization and that he would not be involved in station operations, station employees were never informed that Rice was to be excluded from station management once he left the hospital. Thus, the fact that the board of directors of each of the three licensee corporations had passed resolutions excluding Rice "from any involvement in the managerial, policy and daily decisions of the licensed stations...." was a meaningless exercise designed only to mislead the Commission because it was never communicated to the Stations' employees. Consequently, once Rice was released from the hospital, he was free to reassert his control over his stations and their personnel.

10. Shortly after his release from the hospital, Rice had lunch with WBOW's and WZZQ's new general manager, John Rhea, and let him know that he was unhappy with WBOW's sound. At a subsequent luncheon he let Rhea know that he knew an announcer, Mike Steel, who they could hire for the position of program director for WZZQ. Rice also let Hanks, the licensees' group program director, know of his interest in Steel. Rice told Rhea that he would have Cox handle the hiring. Shortly thereafter Rhea received a call from Cox telling him that Steel had been hired. Subsequently, when Steel changed WZZQ's reporting status in the trade publication R&R, it was a furious Rice who telephoned Rhea and told him he wanted Steel gone immediately. Clearly, these actions demonstrate that Rice was involved in the management and day-to-day decisions of WZZQ.

9. Cox's claim that it was she who had made the decision to hire Steel after hearing him on the air, is simply not believable. It is contrary to Cox's own description of her

duties which did not include the hiring and firing of announcers. Moreover, Hanks and Rhea agree that it was Rice who made the decision to hire Steel and the record makes clear that, even though Cox may have concurred in the decision, it was Rice who made the decision to fire him.

10. It is also clear that Rice was involved in the firing of WBOW's program director, Chip Ramsey. At lunch with Rhea, Rice let his unhappiness with Ramsey be known. At the first opportunity, Ramsey was fired. Again, Cox claims the decision to let Ramsey go was hers. Again, this is contrary to her testimony that her duties did not include the hiring and firing of announcers. Rice's statements at lunch mandate the conclusion that Ramsey was fired because Rice wanted him gone. Moreover, Cox's claim that she fired Ramsey because he was unhappy over changes in WBOW's program format is obviously contrived considering Cox's further claim that she was not involved in the stations' programming.

11. Perhaps the most glaring example of Rice's involvement in station management, was his decision to fire Steve Holler. After hearing Holler's first broadcast, Rice called Rhea and told him to "Get him off the radio." Holler was fired shortly thereafter. In still another example, Rice told Hanks that he had finally decided to fire WZZQ program director Mark Savage. Shortly thereafter Hanks, Rice and Cox travelled to Terre Haute. When they arrived Cox told Savage he was through. While Cox was firing Savage, Rice confided in Hanks that he was "not supposed to do this kind of stuff" (i.e., fire staff), so he had Cox do



it. Cox's claim that it was Rhea's idea to fire Savage is not only contrary to Rhea's and Hank's testimony, but it is also inconsistent with the fact that Rhea's job did not include responsibility for WZZQ's programming. The program director was under the control of Hanks who received his orders directly from Rice. Rice's admission to Hanks, that he used Cox to do things he was not supposed to do demonstrates a willingness on the part of both Rice and Cox to deceive the Commission.

12. Rice's direct involvement in station affairs is dramatically revealed in his firing of Rhea. After firing Savage, Hanks drove Rice and Cox back to St. Peters. During the drive, he overheard Rice tell Cox of his displeasure with Rhea's failure to motivate the sales staff. During this conversation, Rice told Cox, "your guy has got to go." Shortly thereafter Rice and Cox went to Terre Haute and fired Rhea. Rhea's testimony that he was told by Cox that he was being fired, because Rice was not happy with WBOW's financial performance confirms Hanks' testimony that Rice had wanted Rhea fired because he had not motivated the sales staff. Cox's testimony that it was her decision to fire Rhea is contrary to the overwhelming weight of the evidence. Her claim that she brought Rice along as a witness is not credible. If Rice was insulated from all station operations, he had no place acting as a witness to the firing of Rhea. Rhea's firing further establishes that Cox was taking orders on personnel matters from Rice after the Licensees had told the Commission that Rice had been excluded from the day-to-day activities of the stations.

13. Rice was also involved in the firing of a female announcer because he believed

she screeches or squawks on the air. Another announcer was slated to be fired because Rice did not like his aloof attitude. Still another announcer was told to start looking for other work when Rice complained that he was too old for the job. A program director was let go because Rice felt betrayed when he had instituted changes at the station based on a casual conversation he had had with Rice. All of these actions singularly and collectively demonstrate that, contrary to the licensees representations, Rice was heavily involved in the management of his stations after the Licensees had informed the Commission that he would not be.

14. Rice was also involved in the programming of his stations. After he left the hospital, he was on the telephone with Hanks once or twice a week to discuss programming and to make sure that WZZQ's programming format was kept "on track." Rice even went so far as to complain to Hanks about the number of new songs that had been added to WZZQ's playlist. In this regard Rice used Hanks to accomplish his goals the same way he used Cox. By going through Hanks he could effectuate changes in the WZZQ programming without appearing to be personally involved. When Rice was incarcerated, Cox, who is not a programmer, had to hire an outside firm to assist in programming the stations.

15. Rice was also involved in the stations' financial matters. Rice has had signatory authority over the licensees' checking accounts throughout the period of his exclusion from station management and continues to have such authority to-date even though he is in jail.

Moreover, he has exercised his control over the licensees by entertaining offers to sell or swap his broadcast interests. Finally, he vetoed a contract with a programming supplier, where he felt the price was too high. Again, all indicia of Rice's involvement occurred during a period when the Licensees had assured the Commission that Rice was excluded from the affairs of the stations.

16. Apparently none of the stations' employees were ever told that Rice was not the boss. Hanks and Rhea both assumed that because he owned the stations he was in charge. As Hanks put it, "Mike was the owner of the station, and there was no doubt that whatever he said is what went final, period, that's it, it's done." Rhea testified that it was only upon speaking with Bureau counsel about a month-and-a-half before testifying in this proceeding that he learned that Rice was to have been excluded from management at the stations. Clearly, other than pass a corporate resolution and tell the Commission that Rice was excluded from management and the day-to-day affairs of the stations, the Licensees took no action to insure that he was, in fact, excluded.

17. In fact, the record here reveals that Rice never was excluded from either the management or the day-to-day affairs of the station. It is clear that the licensee corporations are Rice's alter egos. He is in full control of them by virtue of his 100% stock ownership of two of the corporations and two-thirds ownership of the third. Through his control of the boards of directors of these corporations Rice could fire Cox or any other employee at will. Despite the representations to the contrary, from the moment Rice was released from the

psychiatric hospital in November 1991, he became involved in the station's engineering, programming, finances and personnel hiring and firing decisions and exercised such control to the time of his incarceration in September 1994. At all times, even through his present period of incarceration, he has retained signatory authority over the stations' checkbooks. Indeed, it is difficult to see how a 100% owner of a company could be excluded from the management of his own company.

18. The Commission cannot tolerate the kind of behavior exhibited by the Licensees in this proceeding . The Licensees deliberately lied to the Commission about Rice's role at the stations. While in letter after letter to the Commission the Licensees claimed that Rice had been insulated from the affairs of the stations, even passing corporate resolutions to that effect, Rice continued to be involved in the stations' programming, hiring and firing, contract negotiations and maintained control over the licensees' checkbooks. In light of this record of deceit, the licenses of CMI, CBI and LBI must be revoked.

### **Issue Three**

19. In adding this issue the Commission was concerned with whether Rice's reported exclusion from the management, policy and day-to-day control had resulted in an unauthorized transfer of control of the stations in violation of Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's rules. The evidence under this issue establishes that there was no abandonment of control of the Licensees' stations by Rice. In fact the evidence is that he continued to operate them up

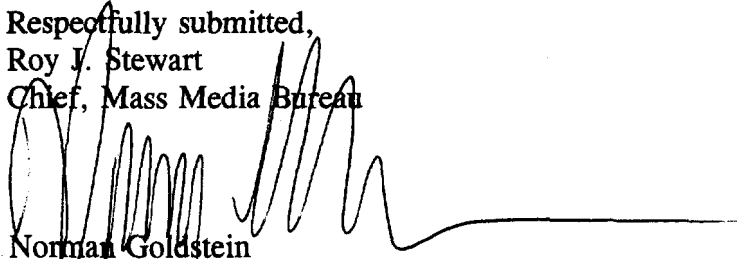
until the moment of his incarceration and there is some evidence that even following his incarceration he was involved in the day-to-day activities of the stations. In any event, the record here establishes that the stations have remained under the control of their boards of directors continuously from before the arrest of Rice to the present time. Consequently, it should be concluded that there was no unauthorized transfer of control.

#### Ultimate Conclusion

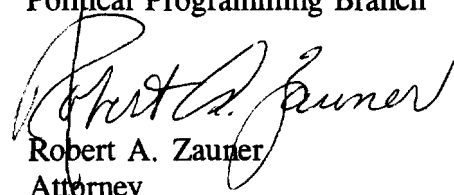
20. Rice is the 100% owner of two of the three captioned licensees and majority owner of the third. Revocation is warranted on two separate and independent bases. In the absence of any significant showing of mitigating circumstances, Rice's conviction on multiple counts of sodomy and sexual deviate assault of juveniles, standing alone, warrants revocation of the licensed stations and construction permits and dismissal of the pending application for

a construction permit. The Licensees' repeated misrepresentations concerning Rice's role in management and day-to-day operations of the stations, standing alone, warrants the same result.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau



Norman Goldstein  
Chief, Complaints and  
Political Programming Branch



Robert A. Zauner  
Attorney  
Mass Media Bureau

Federal Communications Commission  
2025 M Street, N.W.  
Suite 7212  
Washington, D.C. 20554  
(202) 418-1430

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**CERTIFICATE OF SERVICE**

Natalie Moses, a secretary in the Complaints and Political Programming Branch,  
Mass Media Bureau, certifies that she has on this 9th day of September 1996, sent by regular  
United States mail, copies of the foregoing **Mass Media Bureau's Proposed Findings of  
Fact and Conclusions of Law**" to:

Shelley Sadowsky, Esq.  
Michael D. Gaffney, Esq.  
Rosenman & Colin LLP  
1300 19th Street, N.W.  
Suite 200  
Washington, D.C. 20036

  
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Natalie Moses